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HOUSE BILL 391

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Irvin Harrison

AN ACT

RELATING TO FOOD; BANNING THE USE OF THE ARTIFICIAL SWEETENER
ASPARTAME IN FOOD PRODUCTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] LEGISLATIVE FINDINGS. --

A. The legislature finds it is imperative for the public health, safety and welfare to declare that aspartame and its derivative compounds, in all of their trade names, are poisonous and deleterious food additives due to their neurotoxic and carcinogenic metabolites.

B. The legislature finds federal authorities have not intended to or expressed an intention to occupy and preempt areas of concern regarding the prohibition of toxic, neurotoxic, carcinogenic, poisonous or deleterious food additives, and therefore the legislature may prohibit the sale

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1 of products containing aspartame and its derivative compounds
2 in order to protect and ensure the public health, safety and
3 welfare.

4 Section 2. Section 25-2-2 NMSA 1978 (being Laws 1951,
5 Chapter 169, Section 2, as amended) is amended to read:

6 "25-2-2. DEFINITIONS. -- For the purpose of the New Mexico
7 Food Act:

8 A. "aspartame" means the artificial sweetener with
9 the technical name L-aspartyl-L-phenylalanine methyl ester;

10 [~~A-~~] B. "board" means the environmental
11 improvement board;

12 [~~B-~~] C. "dairy establishment" means a milk
13 processing or milk producing facility;

14 [~~C-~~] D. "division" means the department of
15 environment;

16 [~~D-~~] E. "director" means the secretary of
17 environment or [~~his~~] the secretary's authorized
18 representative;

19 [~~E-~~] F. "person" includes an individual,
20 partnership, corporation and association;

21 [~~F-~~] G. "food" means:

22 (1) articles used for food or drink for man
23 or animals;

24 (2) chewing gum; and

25 (3) articles used for components of food or

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1 drink or chewing gum for man or animals;

2 [G-] H. "label" means a display of written,
3 printed or graphic matter upon the immediate container of any
4 article. A requirement made by or under authority of the New
5 Mexico Food Act that any word, statement or other information
6 appear on the label shall not be considered to be complied
7 with unless such word, statement or other information also
8 appears on the outside container or wrapper, if any, of the
9 retail package of such article or is easily legible through
10 the outside container or wrapper;

11 [H-] I. "immediate container" does not include
12 package liners;

13 [I-] J. "labeling" means all labels and other
14 written, printed or graphic matter:

15 (1) upon an article or any of its containers
16 or wrappers; or

17 (2) accompanying such article;

18 [J-] K. if an article is alleged to be misbranded
19 because the labeling is misleading or if an advertisement is
20 alleged to be false because it is misleading, then in
21 determining whether the labeling or advertisement is
22 misleading, there shall be taken into account, among other
23 things, not only representations made or suggested by
24 statement, word, design, device, sound or in any combination
25 thereof, but also the extent to which the labeling or

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1 advertisement fails to reveal facts material in the light of
2 such representations or material with respect to consequences
3 [~~which~~] that may result from the use of the article to which
4 the labeling or advertisement relates under the conditions of
5 use prescribed in the labeling or advertisement thereof or
6 under such conditions of use as are customary or usual;

7 [~~K.~~] L. "advertisement" means all representations
8 disseminated in any manner or by any means, other than by
9 labeling, for the purpose of inducing, or [~~which~~] that are
10 likely to induce, directly or indirectly, the purchase of
11 food;

12 [~~L.~~] M. "contaminated with filth" applies to any
13 food not securely protected from dust, dirt and, so far as may
14 be necessary by all reasonable means, from all foreign or
15 injurious contaminations, or any food found to contain any
16 dust, dirt, foreign or injurious contamination or infestation;

17 [~~M.~~] N. the provisions shall be considered to
18 include the manufacture, production, processing, packing,
19 exposure, offer, possession and holding of any such article
20 and the supplying or applying of any such articles in the
21 conduct of any food establishment; and

22 [~~N.~~] O. "federal act" means the Federal Food,
23 Drug, and Cosmetic Act, [~~21 USC § 301 et seq.~~] the Federal
24 Meat Inspection Act [~~21 USC § 601 et seq.~~] and the federal
25 Poultry

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1 Products Inspection Act [~~21 USC § 451 et seq.~~]. "

2 Section 3. Section 25-2-3 NMSA 1978 (being Laws 1951,
3 Chapter 169, Section 3) is amended to read:

4 "25-2-3. PROHIBITED ACTS. -- The following acts and the
5 causing thereof within the state [~~of New Mexico~~] are [~~hereby~~]
6 prohibited:

7 [~~(a)~~] A. the manufacture, sale or delivery or
8 holding or offering for sale of any food that is adulterated
9 or misbranded;

10 [~~(b)~~] B. the adulteration or misbranding of any
11 food;

12 [~~(c)~~] C. the receipt in commerce of any food that
13 is adulterated or misbranded and the delivery or proffered
14 delivery [~~thereof~~] of the adulterated or misbranded food for
15 pay or otherwise;

16 [~~(d)~~] D. the sale, delivery for sale, holding for
17 sale or offering for sale of any article in violation of
18 Section [~~12~~] 25-2-12 NMSA 1978;

19 [~~(e)~~] E. the dissemination of any false
20 advertisement;

21 [~~(f)~~] F. the refusal to permit entry or inspection
22 or to permit the taking of a sample as authorized by Section
23 [~~16~~] 25-2-16 NMSA 1978;

24 [~~(g)~~] G. the giving of a guaranty or undertaking,
25 which guaranty or undertaking is false, except by a person who

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1 relied on a guaranty or undertaking to the same effect signed
2 by and containing the name and address of the person residing
3 in the state [~~of New Mexico~~] from whom [~~he~~] the person
4 received the food in good faith;

5 [~~(h)~~] H. the removal or disposal of a detained or
6 embargoed article in violation of Section [~~6~~] 25-2-6 NMSA
7 1978;

8 [~~(i)~~] I. the alteration, mutilation, destruction,
9 obliteration or removal of the whole or any part of the
10 labeling of, or the doing of any other act with respect to, a
11 food if [~~such~~] the act is done while [~~such~~] the article is
12 held for sale and results in [~~such~~] the article being
13 misbranded;

14 [~~(j)~~] J. forging, counterfeiting, simulating or
15 falsely representing or without proper authority using any
16 mark, stamp, tag, label or other identification device
17 authorized or required by [~~regulations~~] rules promulgated
18 under the provisions of [~~this~~] the New Mexico Food Act; and

19 K. the manufacture, sale or delivery or holding or
20 offering for sale of any food containing any amount of
21 aspartame and its derivative compounds in any of their trade
22 names. "

23 Section 4. APPLICABILITY. -- The provisions of this act
24 shall not apply to food products located within the state on
25 July 1, 2007.

1 Section 5. EFFECTIVE DATE. --The effective date of the
2 provisions of this act is July 1, 2007.

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